

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #14	CCRB Case #: 201601353	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/13/2016 12:55 AM	Location of Incident: In front of 144 West 4th Street	Precinct: 06	18 Mo. SOL 8/13/2017	EO SOL 8/13/2017	
Date/Time CV Reported Sat, 02/13/2016 3:40 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/19/2016 11:13 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Tennariello	12821	952285	006 PCT
2. POM Craig Sikorski	00962	949913	006 PCT
3. LT Ian Rule	00000	919661	006 PCT
4. Officers			006 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Ian Rule	Abuse: Lieutenant Ian Rule stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.POM Craig Sikorski	Abuse: Police Officer Craig Sikorski searched § 87(2)(b)	
C.LT Ian Rule	Force: Lieutenant Ian Rule hit § 87(2)(b) against a vehicle.	
D.LT Ian Rule	Abuse: Lieutenant Ian Rule searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.POM Joseph Tennariello	Abuse: Police Officer Joseph Tennariello searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
F.POM Craig Sikorski	Abuse: Police Officer Craig Sikorski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
G.LT Ian Rule	Abuse: Lieutenant Ian Rule frisked § 87(2)(b)	
H. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	

Case Summary

On February 13, 2016, § 87(2)(b) filed the following complaint by phone with IAB, generating original log number 2016-5204. The CCRB received the complaint on February 19, 2016.

On February 13, 2016, at approximately 12:55 a.m., § 87(2)(b) was driving east on West 4th Street between Jones Street and Cornelia Street in Manhattan. His friend, § 87(2)(b) was riding in the front passenger seat. At some point, § 87(2)(b) allegedly passed a vehicle on West 4th Street in an unsafe manner, before failing to stop at a stop sign at the intersection of West 4th Street and Cornelia Street. Lt. Ian Rule, PO Joseph Tennariello, and PO Craig Sikorski of the 6th Precinct stopped § 87(2)(b)'s vehicle in front of 144 West 4th Street (**Allegation A**). § 87(2)(b) argued with PO Tennariello, grew angry with § 87(2)(b) when she lowered her window, and allegedly refused to provide his license. PO Tennariello directed § 87(2)(b) to exit the vehicle and walk to the rear. PO Sikorski allegedly searched § 87(2)(b) (**Allegation B**). A physical struggle ensued and all three officers held § 87(2)(b) against the rear of the vehicle while handcuffing him. Once § 87(2)(b) was handcuffed, Lt. Rule allegedly grabbed his head, lifted it away from his vehicle, and pushed it back down such that the left side of § 87(2)(b)'s head struck his vehicle (**Allegation C**). PO Sikorski recovered marijuana from § 87(2)(b)'s person. All three officers searched § 87(2)(b)'s vehicle on scene, and PO Tennariello searched it again after driving it to the stationhouse (**Allegations D, E, and F**). Lt. Rule requested that a female officer respond to the scene, and this officer frisked § 87(2)(b) (**Allegation G**). § 87(2)(b) was transported to the 6th Precinct stationhouse and was released with a DAT. He later found that officers had allegedly ripped up the carpeting in the front of his vehicle (**Allegation H**).

§ 87(2)(b) was charged on his arrest report with unlawful possession of marijuana, disorderly conduct, and failing to signal (BR01).

Video footage which shows officers stopping § 87(2)(b)'s vehicle was obtained from a TARU camera located at the intersection of West 4th Street and Cornelia Street (BR02; BR03). However, the camera was too far from the location of the stop to have captured any of the officers' actions during the stop.

§ 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was deemed unsuitable for mediation due to § 87(2)(b)'s arrest.
- On May 12, 2016, the undersigned requested copy of any Notice of Claim filed with the NYC Comptroller's office. No response has been received as of the date of this report. The response will be added to the case file upon receipt (BR04).

- § 87(2)(b)
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Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b) has never been a complainant, victim, or witness in any previous CCRB complaints (BR09).
- Lt. Ian Rule has been a member of the NYPD for 19 years and has had 39 previous CCRB allegations involving 15 cases. These include 14 force allegations, all of which were exonerated with the exception of one that was unfounded, one that was closed as complainant uncooperative, and one that was closed as victim unavailable. He has had two substantiated allegations (see officer history):
 - In CCRB case #201509217, the Board substantiated allegations of retaliatory summons and discourteous action and recommended charges. The NYPD disposition and penalty are not noted in CTS. The Board also determined that there was evidence suggesting that Lt. Rule made a false official statement.
- PO Joseph Tennariello has been a member of the NYPD for four years and has had two previous CCRB allegations involving two cases with none substantiated. He also currently has four allegations in a pending case (see officer history). § 87(2)(g)
- PO Craig Sikorski has been a member of the NYPD for four years and has had one previous CCRB allegation which was not substantiated. He also currently has three allegations in a pending case, including a vehicle search allegation (see officer history).

Findings and Recommendations

Explanation of Subject Officer Identification

- § 87(2)(b) alleged that PO Tennariello accompanied him to the rear of the vehicle and searched him. However, PO Sikorski identified himself as the officer who met § 87(2)(b) at the rear of the vehicle and attempted to frisk him. Based upon PO Sikorski's admission and the corroborative statements of Lt. Rule and PO Tennariello, the investigation determined that PO Sikorski was the subject officer. Accordingly, the search is pleaded against him.
- It was undisputed that a female officer performed the frisk of § 87(2)(b). However, Lt. Rule recounted that he called this officer to the scene in order to determine whether § 87(2)(b) had any contraband. Because the frisk occurred at Lt. Rule's direction and under his supervision, the allegation is pleaded against him.
- § 87(2)(b) alleged that he found that the carpeting in his vehicle was damaged after he was released at the stationhouse. He did not see which officer or officers caused this damage. All the officers denied causing any such damage, and the investigation ultimately determined that the allegation was unfounded. As a result, the allegation is pleaded against "officers" from the 6th Precinct.
- **Allegation A—Abuse of Authority: Lieutenant Ian Rule stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**

At their CCRB interviews, all three officers recounted seeing § 87(2)(b)'s vehicle unsafely pass another vehicle on West 4th Street between Jones Street and Cornelia Street (BR10; BR11; BR12). All three noted this observation in their memo books (BR13; BR14; BR15), and § 87(2)(b) was eventually charged with failing to signal (BR01). § 87(2)(g)

§ 87(2)(g). The investigation obtained video footage, seen in SnagIt #1 below (BR16), of § 87(2)(b)'s vehicle as it neared and crossed the intersection of West 4th Street and Cornelia Street:



201601353_20160413_1123_DM.mp4

§ 87(2)(g)

§ 87(2)(b) all three officers also recounted that § 87(2)(b)'s vehicle failed to stop at the stop sign at the intersection of West 4th Street and Cornelia Street. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

• **Allegation B—Abuse of Authority: Police Officer Craig Sikorski searched § 87(2)(b)**

§ 87(2)(b) recounted that PO Tennariello instructed him to exit the vehicle, and that PO Tennariello said, “I smell weed,” as soon as § 87(2)(b) exited (BR17). § 87(2)(b) replied, “I got weed,” and told PO Tennariello that the marijuana was in his jacket pocket. PO Tennariello retrieved the marijuana and directed § 87(2)(b) to go to the rear of the vehicle. § 87(2)(b) denied that any officer mentioned marijuana before he exited the vehicle. At the rear of the vehicle, PO Tennariello searched § 87(2)(b)'s pants pockets as § 87(2)(b) protested.

§ 87(2)(b) recounted that PO Tennariello said, “Oh, you got weed in the car? I smell it,” before § 87(2)(b) exited, and that § 87(2)(b) denied having any marijuana (BR18). In her phone statement, § 87(2)(b) said that § 87(2)(b) simply refused to answer PO Tennariello's question (BR19). She denied that she ever smelled an odor of marijuana during the incident. In her phone statement, she said that Lt. Rule searched § 87(2)(b) at the rear of the vehicle, while in her in-person statement she said that PO Tennariello searched him.

All three officers recounted smelling an odor of marijuana emanating from § 87(2)(b)'s vehicle. Lt. Rule first smelled it when § 87(2)(b) lowered the passenger window, PO Tennariello first smelled it when § 87(2)(b) lowered his window, and PO Sikorski smelled it when he reached the vehicle's rear bumper. The marijuana recovered from § 87(2)(b)'s person was vouchered (BR20).

PO Sikorski recounted that he asked § 87(2)(b) if he had anything on him that he should know about, and § 87(2)(b) replied, “I'm not snitching on myself. Do your fucking job.” PO Sikorski knew that he could search § 87(2)(b) because of the odor of marijuana, but decided merely to frisk him and to delay an investigation into the odor until his partners could join him at the rear of the vehicle. He had § 87(2)(b) face the rear of his vehicle and place his hands atop it. PO Sikorski reached down toward § 87(2)(b)'s right pants pocket, and § 87(2)(b) swiped down to knock his hand away. PO Sikorski was not able to further frisk or search § 87(2)(b) until after he was handcuffed.

§ 87(2)(b), § 87(2)(g)

The odor of marijuana emanating from a vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Badger, 52 A.D.3d 321 (N.Y. App. Div. 3rd Dept. 2008) (BR21).

§ 87(2)(b), § 87(2)(g)

- **Allegation C—Force: Lieutenant Ian Rule hit § 87(2)(b) against a vehicle.**

When he first filed the complaint with IAB, § 87(2)(b) recounted that he remonstrated with the officer who was attempting to search him at the rear of the car, and that this officer pressed his knee into the back of § 87(2)(b)'s knee (BR22). § 87(2)(b) recounted, "I put my hands behind my back and I laid my head on the car." He continued, "In the midst of all that, they're arguing with me. The lieutenant grabs my head, he lifts my head off the car, and he slams my head on the car." § 87(2)(b) was handcuffed at the time. He claimed that his left ear began to bleed, and that Lt. Rule's use of force re-aggravated a prior neck injury for which he had previously undergone surgery.

In § 87(2)(b)'s CCRB phone statement, he alleged that PO Tennariello "threw an elbow" into his back, grabbed his arm, pushed him against the rear of his vehicle, and put his knee into the back of § 87(2)(b)'s knee (BR23). § 87(2)(b) was handcuffed, and his head was resting on his vehicle. § 87(2)(b) recounted, "That's when the lieutenant comes over, takes my head off the car, and slams it on the car. Slams my head on the car. I'm in cuffs." The left side of § 87(2)(b)'s head struck the vehicle. When asked what part of the vehicle his head struck, § 87(2)(b) said both the "back" and the "trunk" before explaining that his vehicle is a "wagon." He explained that he did not ask the officers for medical attention because he did not want to be in their presence. However, after being released from custody, he went to § 87(2)(b) Hospital.

In § 87(2)(b)'s in-person interview, he recounted that PO Tennariello handcuffed him at the rear of his vehicle, pushed his knee into the back of § 87(2)(b)'s knee, and held him against his vehicle with the aid of PO Sikorski. § 87(2)(b) variously described himself as "laying on top of the car" and having the left side of his face pressed against the car. Lt. Rule then approached § 87(2)(b) from his right side, grabbed his head with two hands, lifted his head off the vehicle, and slammed it back down once. The left side of § 87(2)(b)'s head struck the vehicle. At this interview, § 87(2)(b) said that the officers asked him if he wanted to go to the hospital at the stationhouse, but he declined because he knew he would be released quickly.

§ 87(2)(b) provided photographs of his left ear and the left side of his face, which he shot after he was released from custody. The photograph of his ear shows a small amount of blood in the ear's concha (BR24). The photograph of the side of his face does not appear to show any injuries (BR25).

§ 87(2)(b)'s medical records from § 87(2)(b) Hospital show that he was first triaged in the emergency room at 3:54 a.m. on the § 87(2)(b) of the incident. He complained of pain to the left side of his head, pain and ringing in his left ear, and pain on the left side of his neck (see Privileged Documents). He reported that his head was "slammed" on a vehicle. He also reported that he had a preexisting neck injury. The records note that dried blood was observed in the inner part of § 87(2)(b)'s left ear. A physical exam conducted at 4:40 a.m. noted that § 87(2)(b)'s head and neck were non-tender, that there was no swelling or obvious injury on his head, and that he had painless range of motion in his neck. It also notes that his pain had lessened since his arrival. It was determined that a CAT scan was not necessary, and § 87(2)(b) was prescribed pain medication and

discharged. § 87(2)(b) returned to § 87(2)(b) Hospital on § 87(2)(b) and complained of a headache and pain at his left temple, vomiting, chills, and sleeplessness. The records note that § 87(2)(b) also had a cough and runny nose, and that he had a low-grade fever. A CAT scan showed no significant intracranial abnormality, but did show evidence of sinus disease in § 87(2)(b)'s ethmoidal, sphenoidal, and maxillary sinuses. § 87(2)(b) was diagnosed with acute ethmoidal sinusitis. It was also determined that § 87(2)(b) should be referred to neurology because "concussion syndrome possible in context of recent trauma."

In § 87(2)(b)'s phone statement, she recounted that she exited the vehicle less than a minute after § 87(2)(b) did, and saw all three officers standing at the rear with § 87(2)(b) who was already handcuffed. Lt. Rule was trying to search § 87(2)(b) while § 87(2)(b) protested and kept "wiggling" his legs. Lt. Rule told § 87(2)(b) to stop resisting and stuck his knee into the back of § 87(2)(b)'s knee. At the same time, Lt. Rule grabbed § 87(2)(b)'s head, lifted it up, and struck it back down against the vehicle. § 87(2)(b) reiterated this account during her in-person interview, and added that § 87(2)(b)'s head was bent over the rear of his vehicle when Lt. Rule grabbed it. She said Lt. Rule grabbed § 87(2)(b)'s head with only one hand. § 87(2)(b)'s head was turned so that he was facing § 87(2)(b) who was standing on the passenger side of the vehicle, the left side of his face struck the vehicle, and his hat fell off due to the use of force.

PO Sikorski recounted that, once he attempted to frisk § 87(2)(b)'s right pocket and § 87(2)(b) swiped his hand away, he began to fear that § 87(2)(b) might be armed. He bear-hugged § 87(2)(b) from behind around his upper arms and leaned forward so that § 87(2)(b) was pressed up against the rear of his vehicle. Lt. Rule and PO Tennariello came to PO Sikorski's aid. Each grabbed one of § 87(2)(b)'s arms and briefly struggled to pull his hands behind his back before PO Sikorski handcuffed him. Throughout the struggle, § 87(2)(b) remained pressed against the rear of his vehicle. PO Sikorski described the vehicle as a station-wagon that descends in the back, such that the vehicle came up to § 87(2)(b)'s chest. PO Sikorski said that § 87(2)(b) remained upright and was not leaning or bent over the vehicle. He denied that he ever struck § 87(2)(b)'s head against the vehicle and denied seeing Lt. Rule or PO Tennariello do so. When asked if either of his partners ever grabbed § 87(2)(b)'s head, PO Sikorski said that he "didn't really see what they were doing." When asked if § 87(2)(b)'s head ever made contact with his vehicle at any point during the struggle, PO Sikorski said that he "didn't really see anything like that," but also that he did not "really know" because he did not see where the "rest of § 87(2)(b)'s] body really went" after he grabbed him.

Lt. Rule recounted hearing a commotion at the rear of the vehicle and looking back to see PO Sikorski engaged in a physical struggle with § 87(2)(b). Lt. Rule and PO Tennariello joined the struggle, and the officers "braced § 87(2)(b) up against the rear of the car to cuff him." Lt. Rule denied that he or any other officer struck § 87(2)(b)'s head against the vehicle. When asked if he ever grabbed § 87(2)(b)'s head, Lt. Rule said, "I grabbed the back of him and restrained him against the car. I don't remember grabbing his head." When asked if § 87(2)(b)'s head ever came into contact with his vehicle, Lt. Rule said, "I don't remember that happening."

PO Tennariello's account of the struggle with § 87(2)(b) corroborated those of Lt. Rule and PO Sikorski. When asked if § 87(2)(b) was ever leaned over his vehicle, PO Tennariello said, "Yeah, yeah, we were, you know—he was pretty much pinned up, by the time we had control over him, he was kind of like pinned against the car. Cause he kept using his body to push off the car. So he was definitely pinned up against the car." PO Tennariello denied that any officer ever grabbed § 87(2)(b)'s head and denied that any officer ever struck § 87(2)(b)'s head against the vehicle.

All three officers denied observing any physical injuries on § 87(2)(b). They all viewed the photograph of the blood in § 87(2)(b)'s left ear and denied seeing it during the incident.

Patrol Guide Procedure 203-11 requires that officers use only the amount of force necessary to effect an arrest (BR26).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

- **Allegation D— Abuse of Authority: Lieutenant Ian Rule searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.**
Allegation E— Abuse of Authority: Police Officer Joseph Tennariello searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.
Allegation F— Abuse of Authority: Police Officer Craig Sikorski searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Tennariello and PO Sikorski admitted to searching § 87(2)(b)'s vehicle on scene, and Lt. Rule believed he did but was uncertain. PO Tennariello recounted that § 87(2)(b)'s vehicle still smelled of marijuana after PO Sikorski recovered marijuana from § 87(2)(b)'s person, and said he did a “once-over” or visual inspection of the interior before driving the vehicle to the stationhouse. PO Sikorski admitted to participating in a “brief run-through” of the vehicle, in which he looked under seats and in the glove compartment. PO Tennariello further recounted that the vehicle still smelled of marijuana once it was parked at the stationhouse, and that he performed a more intensive search of the vehicle there. He searched the floor, center console, cup-holders, glove compartment, and trunk. He also moved clothing in the backseat. He did not find any marijuana, though the odor remained even after he finished searching.

The odor of marijuana emanating from a vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Badger, 52 A.D.3d 321 (N.Y. App. Div. 3rd Dept. 2008) (BR21).

§ 87(2)(b), § 87(2)(g)

- **Allegation G— Abuse of Authority: Lieutenant Ian Rule frisked § 87(2)(b)**

§ 87(2)(b) alleged that Lt. Rule told a female officer who was among the additional officers to respond to the scene to get § 87(2)(b)'s identification and to search her. The female officer took § 87(2)(b)'s identification, and frisked § 87(2)(b)'s upper body, waist, jacket pockets, and pants pockets. § 87(2)(b) removed cigarettes and gum from her pockets and showed them to the officers, although the officer did not ask her to do so.

Lt. Rule explained that he called a female officer to the scene in order to investigate whether § 87(2)(b) had any marijuana on her person. He believed the officer was PO Annalee Simon. Lt. Rule told § 87(2)(b) that the vehicle smelled of marijuana and that § 87(2)(b) was in possession of marijuana, and he asked § 87(2)(b) if she had any contraband and if the officers could check her. § 87(2)(b) agreed, and PO Simon performed a "pat-down."

The odor of marijuana emanating from a vehicle provides officers with probable cause to search the vehicle and its occupants. People v. Badger, 52 A.D.3d 321 (N.Y. App. Div. 3rd Dept. 2008) (BR21).

§ 87(2)(b), § 87(2)(g)

- **Allegation H—Abuse of Authority: Officers damaged § 87(2)(b)'s property.**

§ 87(2)(b) did not make any allegations regarding property damage during his IAB intake phone call. In his CCRB phone statement, he alleged that officers ripped up carpeting in the front of his vehicle. During his in-person statement, § 87(2)(b) alleged that, upon being released from the stationhouse and reentering his vehicle, he found that the floor carpets had been ripped up on the driver's and passenger's side near the gearshift and center console. He said during his in-person interview that the carpets were permanently damaged and could not simply be moved back into place. At the time of his in-person interview on March 2, 2016, he had not taken any photographs of the damage to the carpets. On March 21, the investigator spoke to § 87(2)(b) by phone, and § 87(2)(b) said that the damage to the carpets had still not been repaired. He promised to take photographs of the damage and to email them to the investigator. He did not do so, and he did not contact the investigator or the CCRB again. To date, he has not provided photos of the damage.

§ 87(2)(b) was with § 87(2)(b) when he drove his vehicle away from the stationhouse. She recounted that the interior of his vehicle was "a mess," and said she had difficulty closing his glove compartment. However, she denied that there was any property damage and specifically denied that any floor carpeting was ripped up.

All three officers denied ripped up carpeting or otherwise damaging the interior of § 87(2)(b)'s vehicle.

§ 87(2)(b), § 87(2)(g)

Squad: 14

Investigator:	_____	<u>Daniel Giansante</u>	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date